THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

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AND

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THE HON'BLE SRI JUSTICE G.CHANDRAIAH

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WRIT PETITION NOS.18246 AND 23410 OF 2003

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COMMON ORDER: (Per TCSR,J)

Inasmuch as both the writ petitions emanate from a common order dated 15.07.2003 passed by the learned Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for brevity 'the Act'), Hyderabad, in L.G.C. No.39 of 1998 and as parties are the same, they can be disposed of together.

Writ Petition No.18246 of 2003 was filed by the second respondent in L.G.C.No.39 of 1998 whereas Writ Petition No.23410 of 2003 was filed by the applicant therein. It is expedient to refer the parties as they were originally arrayed in L.G.C.No.39 of 1998.

Briefly stated the facts are thus: - The land in an extent of 24 acres covered by survey numbers 33/8, 33/9, 33/10 and 33/11 situate at Jeedimetla Village in Quthbullapur Mandal of Ranga Reddy District is the land in dispute. The applicant claimed to have purchased the said land from the first respondent under an agreement of sale dated 19.07.1966 followed up by a registered sale deed dated 14.12.1966. Possession thereof was delivered to him pursuant to the agreement. The sale in favour of the applicant was validated under Section 50-B of the A.P. (Telengana Area) Tenancy and Agricultural Lands Act, 1950 by the Tahsildar, Medchal, by his proceedings D.Dis.No.B2/5236/1970 dated 24.10.1970. The land in dispute being an agricultural land, the applicant had been

cultivating the same and his name was mentioned as possessor thereof in the pahanies for the years 1978-79 and 1979-80. His name was also duly mutated in the revenue records as pattadar. The applicant, however, could not cultivate the application schedule land in the late 1980s. When the first respondent along with five others tried to interfere with the applicant's possession, he filed a suit O.S.No.83 of 1988 on the file of the District Munsif, Medchal, for perpetual injunction. A temporary injunction was granted in his favour on 21.11.1989. However, the suit ended in dismissal for default on 07.06.1991. The applicant came to know the deletion of his name from the pahanies in the year 1993-94 onwards. When he made enquiries with the Mandal Revenue Officer, Medchal, he was informed by him under his proceedings L.Dis.No.A/489/96 dated 18.11.1996 that the land was divided into plots. The applicant preferred an appeal before the Revenue Divisional Officer, Chevella. In the meanwhile, he noticed some constructions on the application schedule land in the month of March, 1997. He filed objections before the Municipal Commissioner, Quthbullapur Municipality, for having sanctioned the layouts in respect of his lands. The respondents 2 to 4 made some constructions on the disputed land after having obtained G.P.As. from the first respondent who prepared an unauthorized layout to sell the application schedule property illegally without the necessary title. Hence the claim.

The respondents 1 and 2 filed separate counters resisting the claim of the applicant. The case of the first respondent was that he and the applicant together along with three others purchased the land in an extent of 66 acres from the original owners and later the applicant and the other three persons since had withdrawn, he became

the owner of the entire Acs.66.34 guntas of land which includes the land in dispute. Subsequently when considerable pressure was exerted on him, he sold the land in an extent of 24 acres to the applicant. However, the applicant never showed any interest in developing the land since he was not a permanent resident of Hyderabad. By his own hard work, the first respondent developed the land which was in his possession. The first respondent had to shift from Jeedimetla village to Hyderabad city. He prepared plans to develop his land into smaller plots for fear of the land being grabbed by unscrupulous elements. The applicant himself came up with proposal to sell his land as house sites in view of growing urbanization. The sales were completed by the year 1987-88. Subsequently the value of the property was enhanced. Therefore, the applicant out of greediness filed a suit in the year 1988 and since there had been no case, he allowed the suit to be dismissed for default. The first respondent and the applicant entered into separate agreements to sell the land to one K.Pratap Reddy, L.Panduranga Reddy and T.Nagi Reddy in the year 1984. The purchasers developed the land and prepared a comprehensive layout comprising of the entire land in dispute of the applicant and the land in an extent of 19 acres of the first respondent out of the land owned by him. As and when the said developers brought the purchasers, the plots were sold to the individual buyers. The prospective purchasers insisted that the person who was the pattadar as per the revenue records alone should convey the property. The first respondent had to execute the documents at the behest of the applicant although the applicant himself accepted the entire consideration. The construction activity started long back and quite a number of houses had already been

constructed by the year 1987 itself. The first respondent gave the General Powers of Attorney in favour of the respondents 2 to 4 at the instance of the applicant for the purpose of conveying the individual plots. The second respondent is no other than the son of one of the developers who had undertaken the development of the layout of the applicant's land and the land of the first respondent to the extent of 19 acres. The applicant who wanted to have the best of both the worlds of having the land for himself after receiving consideration for the sale of land. The Judgment in the suit O.S.No.83 of 1988 would operate as *res judicata* and the application was liable to be dismissed.

The case of the second respondent was that he being the son of one of the developers by name Nagendra Reddy alias Nagi Reddy with whom the applicant entered into an agreement for sale of his land in the year 1984 along with one K.Pratap Reddy and L.Panduranga Reddy, he had been looking after the entire development of the land belonging to the applicant as well as the first respondent. The division of plots, laying of roads and sale of plots to various members of the local area including the employees of M/s.Praga Tools Limited were organized by him during the years 1984-1986. Along with the respondents 3 and 4, he too got a plot registered in his name for a valuable consideration paid directly to the applicant and constructed a house thereon in the year 1986 itself after having obtained the necessary panchayat permission. The legal advice given to him was that since the first respondent was the pattadar, any conveyance of title deed by the applicant would not hold good. Since the applicant was never available to them for day to day

transfer of sales, the applicant himself requested in the presence of the second respondent the first respondent to effect the sales promising that he would endorse the same at any later convenient date. However, he always avoided such confirmations. The sale consideration amount collected by the second respondent from the individual purchasers was pooled up and paid to the applicant and the first respondent proportionately. The applicant taking advantage of the technicality of law was now turning round and alleging the act of land grabbing so as to coerce the respondents to extract money from them.

The fifth respondent association was impleaded as a party to the application at a later stage which too filed its counter through its Secretary. The case of the fifth respondent was that the employees of its association purchased plots from the applicant and the respondents 1 and 2 and the developers of the property namely, K.Pratap Reddy and L.Panduranga Reddy after making payments to the applicant and the first respondent proportionately basing on their respective titles. The employees formed themselves into an association called Sivaji Nagar Welfare Association, Jeedimetla Village, Hyderabad. The applicant collected the entire consideration from them. In view of the legal advice, they obtained the documents from the first respondent whose name stood recorded in the revenue records as pattadar. The applicant assured them that he would request the first respondent to execute the documents.

After impleading the fifth respondent association as a party to the application, the applicant filed rejoinder denying all the allegations made by the respondents *inter alia* in their counters.

On the above pleadings, the learned Special Court

framed initially four issues. Later it deleted issue No.3 and instead framed two additional issues. They are as under:

1) Whether the applicant has title to the application schedule property?

2) Whether the rival title set up by the respondent No.2 is true, valid and binding?

Additional issue:

3) Whether the respondents are land grabbers within the meaning of the Act XII of 1982?

Additional issue framed on 08.08.2002:

4) Whether the rival title set up by the respondent No.5 and whether the payments alleged by them said to have been made to the applicant are true?

At the time of enquiry, the applicant examined himself as P.W.1 and got Exs.A.1 to A.17 marked. Five witnesses were examined on the side of the respondents besides getting Exs.B.1 to B.33 marked.

Appreciating the evidence thus adduced on either side, both oral and documentary, the learned Special Court was of the view on issue No.1 that the applicant had title to the application schedule property. On issue No.2, it was held that the respondents absolutely failed to prove that they got right and title to the application schedule property and they failed to prove further that they paid any consideration to the applicant in respect of the purchases of the application schedule property executed by the first respondent. On additional issue framed on 08.08.2002, the learned Special Court was of the view that the rival title set up by the fifth respondent association members was not true, not valid and not binding on the applicant and the payments said to have been made were not true. Nonetheless, eventually the learned Special Court dismissed the application, having regard to the observation made on issue No.2 that the applicant legally delivered possession of the application schedule property

to R.W.3 in this case and Panduranga Reddy under an agreement of sale dated 07.02.1985 and, therefore, the question that the property being grabbed by any of the respondents would not arise and eventually was of the view that the respondents never grabbed the application schedule property.

Aggrieved by the said order, as aforesaid, the applicant filed Writ Petition No.23410 of 2003. Having been aggrieved by the finding that the applicant was the owner, the second respondent filed the other Writ Petition No.18246 of 2003.

Sri M.Ravindranath Reddy, learned counsel appearing for the writ petitioner in W.P.No.23410 of 2003 / applicant in L.G.C.No. 39 of 1998, represents that having held that the applicant was the owner, the Special Court ought to have seen that the possession of the respondents was unlawful and without lawful entitlement thereto and, therefore, they are obviously land grabbers.

Sri P.Sri Raghuram, learned counsel appearing for the writ petitioner in W.P.No.18264 of 2003 / second respondent in L.G.C.No.39 of 1998, represents that in view of the finding given by the Special Court that the possession was given to the respondents pursuant to the development agreement, they can never be termed as land grabbers.

In view of the rival contentions, the only one question that falls squarely for our determination is as to whether under the facts and circumstances of the case, the respondents can be called as land grabbers?

Admittedly, the applicant purchased the land in dispute in an extent of 24 acres from the first respondent although the first respondent claimed that he was pressurized to execute the sale deed in respect thereof in

favour of the applicant and no consideration in fact was passed, failed in fact to substantiate the same. Having regard to his subsequent plea that he was asked to look after the developmental work, his earlier plea pales into insignificance. The fact remains obviously that the applicant was the owner and pattadar of the land in dispute. This in fact is the unequivocal conclusion arrived at by the learned Special Court too.

The claim of the respondents seems to be that the applicant executed a sale-cum-developmental agreement in favour of K.Pratap Reddy, L.Panduranga Reddy and T.Nagi Reddy in respect of the land in dispute and similarly the first respondent executed another such developmental agreement in their favour in respect of his adjacent 19 acres of land out of his entire land of 42 acres and it is those persons who developed the land, divided into plots, sold to the individual purchasers and that inasmuch as the first respondent's name stood recorded in the revenue records, under a legal advice the purchasers wanted the first respondent to execute the sale deeds in their favour and at the behest of the applicant, accordingly the first respondent executed the necessary documents in favour of the respondents 2 to 4 and other purchasers of fifth respondent association but in fact the applicant received the sale consideration from them directly. The second respondent in this case claims to be the son of one of the developers. R.W.3 in this case was the other developer in whose favour the applicant is said to have executed an agreement of sale. There has been no whisper whatsoever in the pleadings of the applicant about the execution of any such agreement of sale in favour of Pratap Reddy, Panduranga Reddy and Nagi Reddy. To buttress the plea

taken by the respondents, they examined R.W.3 and got Exs.B.2 to B.4 receipts said to have been passed by the applicant in favour of Panduranga Reddy and Pratap Reddy marked in evidence. Ex.B.1 letter said to have been addressed by the applicant to Pratap Reddy and Panduranga Reddy questioning their attitude in procrastinating the execution of the sale deed has been marked on their side. Yet another letter said to have been addressed by the applicant in Ex.B.5 to Nageswara Rao the first respondent was also introduced in evidence. Similar such letters in Exs.B.6 to B.9 have also been introduced in evidence. Exs.B.12 to B.17 are the other letters said to have been addressed by the applicant in favour of the first respondent. Exs.B.18 to 25 are the unregistered agreements of sale executed by the first respondent in favour of the individual purchasers. Exs.B.27 to B.32 are the certified copies of pahanies for the years 1962-63 to 1984-85. Ex.B.33 is, however, an agreement of sale said to have been executed by the applicant in favour of one B.Durga Prasad on 16.12.1986.

That the applicant entered into an agreement of sale with Pratap Reddy and Panduranga Reddy has been admitted by the applicant. Exs.B.1 to B.4 have been proved through the applicant. Under Exs.B.2 to B.4 a total sum of Rs.3.25 lakhs was received by the applicant from the said Pratap Reddy and Panduranga Reddy towards part consideration under the agreement of sale. However, while it is the case of the applicant that he only entered into an agreement of sale, it was the case of the respondents that it was an agreement of sale-cum-developmental agreement. Admittedly that agreement was executed in favour of Pratapa Reddy and Panduranga Reddy only and it does not include Nagireddy as claimed. But the said

agreement of sale-cum-developmental agreement is not forthcoming in this case. Even the development agreement said to have been executed by R.1, in favour of Pratapa Reddy has not been filed in this case to probablise the theory of execution of developmental agreements for the entire extent of Ac. 43.0 of land.

Nonetheless having regard to the fact that the land in dispute has been divided into plots and in fact the applicant himself sold under Ex.B.33 one such plot to one Durga Prasad and having regard to the fact that the applicant suppressed the execution of agreement of sale in favour of Pratap Reddy and Panduranga Reddy, the learned Special Court was of the view that possession of the land in dispute was delivered by the applicant pursuant to the developmental agreement. At the same time, the learned Special Court reached an unequivocal finding that the respondents failed absolutely to prove that they got right and title to the application schedule property and that they paid consideration to the applicant in respect of the purchases made by them and, therefore, the rival title set up by the fifth respondent association members was not true, was not valid and was not binding on the applicant and the payments said to have been made by them were not true. Thus, there appears some dichotomy in the conclusions reached by the learned Special Court.

R.W.3 in his evidence admitted that the agreement obtained by him from the applicant was an agreement of sale and not mere development agreement. It is clear from his evidence that the applicant executed the agreement in his name and in the name of one Panduranga Reddy in the year 1985. It is curious as to why the said agreement has not been produced before the Court. The plea that it is a development-cum-sale agreement is

integrally connected to the other plea that R1 at the behest of the applicant sold the plots, and in fact the land was divided into plots along with the land of R1 under another development-cum-sale agreement. Both the agreements existence whereof is not in dispute have not been filed. In view of the admission of R.W.3 coupled with the non-filing of the agreements falsify the version that it was a case of development-cum-sale agreement. When that part of the version of the respondents is not proved and when that payment is held to be not proved we are of the considered view that it is neither a case of development as propounded nor a case of sale.

R.W.3 did not speak anything about the delivery of possession of the land in dispute pursuant to the agreement. It is appropriate here to consider the evidence of R.W.2, the second respondent. He categorically deposed that he purchased 1200 square yards of land from the first respondent and he had nothing to do with the application schedule land and his land fell in the share of the first respondent. His evidence further shows that the applicant as well as the first respondent together gave the entire extent of Acs.43.00 of land to one Pratap Reddy for development (R.W.3). A single lay out was formed for the entire extent and Pratap Reddy, the developer, paid money to the applicant for his half share of Acs.24.00. Interestingly the plea taken by this witness *inter alia* in his counter appears to be altogether different. He categorically pleaded that he being the son of one of the developers, by name, T.Nagendra Reddy-alias-Nagi Reddy with whom the applicant entered into an agreement for sale of his land in the year 1984 along with one, K.Pratap Reddy and L.Panduranga Reddy, he had been looking after

the entire development of the land belonging to the applicant as well as the first respondent. Obviously, the evidence of R.W.2 is not consistent with the plea taken by him *inter alia* in the counter but in total deviation thereto. The evidence of R.W.3 shows that the applicant executed an agreement of sale in favour of Pratap Reddy and Panduranga Reddy. R.W.3 stated in his evidence that he paid the consideration under the agreement for the entire extent of Acs.24.00 of land. There is no evidence other than Exs.B2, B3 and B4 under which the sale consideration is said to have been paid. The evidence of R.W.3 shows that some amount was paid in cash and the balance amount was paid by crediting it to the bank account of the applicant, but no care has been taken to prove the same. Fact remains that there is paucity of evidence to show that the total consideration was paid to the applicant under the agreement of sale executed by him in favour of R.W.3 and one Panduranga Reddy.

The plea that the land in dispute was given under a development-cum-sale agreement is integrally connected to the other plea that R1 at the behest of the applicant sold the plots and in fact, the disputed land of the applicant and Acs.19.00 of land belonging to R1 together in an extent of Acs.43.00 was developed and divided into plots by Pratap Reddy and since the land stood registered in the revenue records in the name of the first respondent, he was asked to execute the necessary conveyance deeds in favour of the various purchasers. In the absence of any proof that in fact such a development-cum-sale agreement has been executed by applicant in favour of Pratap Reddy and Pandu Ranga Reddy and by the first respondent in favour of Pratap Reddy and having regard to the clear finding reached by the learned Special Court that the

respondents failed to prove that they paid consideration to the applicant in respect of the purchases made by them arouses any amount of doubt on the veracity of the entire theory propounded by the respondents. The claim of the respondents that it was a case of sale-cum-development agreement has not been substantiated. Possession is not shown to have been delivered by the applicant to the respondent for that purpose or as a matter of that under the agreement. This crucial aspect has not been considered by the learned Special Court before reaching the conclusion that the respondents could not be considered as land grabbers. The learned Special Court has not considered the necessary ingredients that constitute the act of land grabbing. Oblivious of the same it jumped to the conclusion that inasmuch as the respondents are in possession of the land in dispute pursuant to the agreement of sale executed in favour of R.3 and another, and without considering whether such possession is traceable to any lawful entitlement or not. In fact, the provisions of Section 2 (d) and 2 (e) of the A.P. Land Grabbing (Prohibition) Act have not been considered. Such a conclusion is not based upon any evidence adduced on the point and is therefore vitiated on account of error of jurisdiction. In the absence of any such clear finding given by the learned Special Court it is not desirable for this Court sitting in *Certiorari* jurisdiction to adjudicate the matter basing upon the evidence available on record. This Court is not certainly exercising an appellate jurisdiction. Therefore, in our considered view the matter requires to be remitted to the Special Court for fresh consideration in the light of the observations made *inter alia* in this order. The Special Court may also consider the desirability of giving an opportunity to the parties to adduce fresh evidence, if

any, in the event they desire to do so.

For the above reasons, the Writ Petition No.23410 of 2003 is allowed and the impugned judgment of the Special Court Dated 15-07-2003 passed in L.G.C.No.39 of 1998 is hereby set aside and the matter is remitted to the Special Court for fresh consideration in the light of the observations made *inter alia* in this order.

Consequently, Writ Petition No.18246 of 2003 must fail and is dismissed. The costs shall abide the result in the L.G.C. No.39 of 1998.

T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

Dated_____January, 2007

VGSR/SKMR

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WRIT PETITION NO.18246 OF 2003

(Per TCSR,J)

DATED 07---02---2007

T.Bhaskar Reddy S/o Narendra Reddy,
Aged about 42 years,
R/o 144/B, MIGH, S.R.Nagar,
Hyderabad. ...
Petitioner

v.

The Special Court under A.P. Lang Grabbing
(Prohibition) Act, BRKR Govt. Offices Complex,
Tank Bund Road, Hyderabad. And Others ...
Respondents

WRIT PETITION NO.23410 OF 2003
(Per TCSR,J)

DATED 07---02---2007

S.Balakrishnamurthy S/o Ramaswamy,
Aged about 83 years,
R/o Door No.59-13-34, Ramachandranagar,
Vijayawada-8, Krishna District. ...
Petitioner

v.

P.Nageswara Rao S/o Late Lakshminarayana,
Aged about 82 years,
R/o 5-8-31, F.S.Lane, Abids,
Hyderabad. And others ...
Respondents